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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/930,422

08/15/2001

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BPCODE2

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7590  
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01/07/2008

EXAMINER

BUCHANAN, CHRISTOPHER R

ART UNIT

PAPER NUMBER

3627

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01/07/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/930,422	<b>Applicant(s)</b> LAM, PETER AR-FU	
	<b>Examiner</b> CHRISTOPHER R. BUCHANAN	<b>Art Unit</b> 3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 and 36-51 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 19-39, 41-48, 50 and 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 7, 9-18, 40 and 49 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

### ***Claim Objections***

2. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6, 7, 9-18, 40, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spackova et al. (US 4,539,585) in view of Aisaka et al. (US 4,417,401).

Regarding claim 40, Spackova discloses a method of processing a body profile (BP) code describing the physical dimensions of a human body to facilitate garment shopping, the method including the steps of;

(1) defining m different physical dimensional parameters of said human body (the indicia segments (72) and coded indicia (74) are used to define various physical parameters of a subject wearing a form fitting garment, col. 4 line 1+, see Fig. 3),

(2) measuring a physical dimension of said body to produce m values for each of said m defined parameters (the orientation of each segment (72) and indicia (74) are computer identified (i.e., measured and stored, col. 4 line 7+) and used to provide a body location on which items of apparel should be worn (col. 4 line 18+), wherein orientation includes rotation and position (col. 3 line 54+), this constitutes measuring the body and producing values for the parameters); and

(3) processing said m values to produce a multiple digits BP code for representing said m values (the form fitting garment (71) contains a plurality of coded segments (72) which are used *in toto* to form a composite image of the garment and, therefore, of the subject's body since the garment is form fitting (col. 4 line 1+), the stored data for the composite image would result in a multi-digit code that represents the particular features (m values) for that body).

Regarding claim 1, a number of sizes are available for garments and the BP code is used to determine a correct fit for the subject's body (col. 4 line 15+). The exact manner by which the correct fit is determined (chart, image matching, etc.) would be a matter of design choice.

The method of Spackova differs from the claimed method in that the body profile code is not explicitly shown to be a compressed code (claim 40) or to include a primary compressed n1 digits code and a supplemental n2 digits code for representing said m values, wherein said n2 digits code further comprises a n3 digits code (claims 6, 7, 9-18 and 49).

Aisaka discloses a device for measuring garments and the body of a garment wearer (col. 1 line 60) and teaches using a multiple digit compressed body profile code (No. 5, M, XL, etc., col. 1 line 7-20) to represent the measurements of the garment wearer's body. The various measurements of the body (waist, chest, height, etc.) are "compressed" into a single code (e.g., M) that represents the overall body profile.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Spackova so that the body profile code is a compressed code, as taught by Aisaka, to make garment shopping easier for individuals that know their body profile code. The examiner further notes that the feature of a compressed body profile code is well-known and commonly used in the art. Codes for body sizes, such as "Large" or "dress size 4", have been in widespread use for many years.

Regarding claims 6, 7, 9-18 and 49, it would have been obvious to one of ordinary skill in the art at the time of the invention that the different data strings (n1 and n2 codes) could be used for a variety of applications (garment fitting, data manipulation, etc). In the examiner's view, the particular application selected for the n1 and n2 data strings (e.g., size chart for fitting purposes, enhance resolution, physical dimensional parameter, non-dimensional related information related to said human-body, out of range information of a parameter, etc.) would be a matter of design choice, and, therefore, that limitation would not hold patentable weight.

#### ***Allowable Subject Matter***

5. Claim 8 is allowed.

#### ***Response to Arguments***

6. Applicant's arguments filed October 31, 2007 have been fully considered but they are not persuasive. Applicant argues that the prior art references used in the rejection do not disclose all of the claimed features of the instant invention, in particular, that the Powell reference does not disclose any compression technology. Applicant also questions the use official notice with regard to the rejection of claims 1, 6-18, and 49.

The examiner disagrees and stands by the rejection. Applicant's arguments with regard to Powell are moot in view of the new grounds of rejection provided in this action. Regarding the use of official notice, the examiner notes that official notice (stating that a limitation is old and well-known) is not used in the rejection of these claims. In the

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rejection above, it is stated that the limitations set forth in these claims would be a matter of design choice, which is a different matter from official notice.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on PTO Form 892 enclosed herewith.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER R. BUCHANAN whose telephone number is (571)272-8134. The examiner can normally be reached on Mon.-Fri. 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. Ryan Zeender/  
Supervisory Patent Examiner, Art  
Unit 3627

CB